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LAW OFFICES  
**HALEY, BADER & POTTS**

4350 NORTH FAIRFAX DR., SUITE 900

ARLINGTON, VIRGINIA 22203-1633

TELEPHONE (703) 841-0606

FAX (703) 841-2345

POST OFFICE BOX 19008

WASHINGTON, D.C. 20036-9008

TELEPHONE

(202) 331-0606

HENRY A. SOLOMON  
ADMITTED IN VA AND D.C.

May 17, 1993

Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

Reference: MM Docket No. 93-51  
New Albany, Indiana

Rita Reyna Brent  
File No. BPH-911115MC

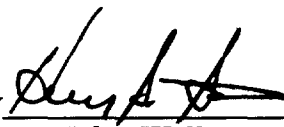
Dear Ms. Searcy:

Submitted herewith on behalf of Rita Reyna Brent are an original and six copies of a **Reply of Rita Reyna Brent to Martha J. Huber** in the above referenced proceeding.

If there are any questions in regard to this matter, kindly communicate directly with this office.

Respectfully submitted,

**RITA REYNA BRENT**

By   
John Wells King  
Henry A. Solomon

HAS:dh  
Enclosure

Her Attorneys

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MAY 17 1993

Before The  
**Federal Communications Commission**

Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of

) MM Docket No. 93-51

) **MARTHA J. HUBER, et al.,**

) For Construction Permit for a  
 ) New FM Station on Channel 234A  
 ) in New Albany, Indiana

TO: The Honorable Richard L. Sippel  
 Administrative Law Judge

**REPLY OF RITA REYNA BRENT TO MARTHA J. HUBER**

Rita Reyna Brent ("Brent"), by her attorneys, respectfully files this reply with respect to the Martha J. Huber ("Huber") "Consolidated Opposition to Motions to Enlarge Issues." In support hereof the following is shown:

1. A new bank letter signed by Mr. Leo Tierney states that "a percentage over prime" -- a term used in Mr. Tierney's October 29, 1991, commitment letter to Huber -- really meant "one percent over prime." Huber thus purports to amplify Mr. Tierney's letter and includes her Declaration. In fact, the commitment letter has essentially been rewritten, not amplified. Huber does not directly dispute that the term "a percentage over prime," could just as well mean ten percent or one hundred percent, as one percent.<sup>1</sup> Indeed, no one familiar with the English language could have been expected to ascribe to "a percentage"

<sup>1</sup> "Per cent is employed only specifically and always with a numeral. Percentage is never preceded by such a figure, but should be qualified by a general term to indicate size (since percentage does not necessarily imply smallness." *American Heritage Dictionary* (New College Ed.). (Emphasis added.)

the sole and exclusive retrospective meaning now enunciated by Mr. Tierney; *i.e.*, one percent

2. Similarly, Mr. Tierney's 1991 letter to Huber specified a loan term which "would be for as long two to five years." The banker now says he meant that the loan term would be for a "period of a minimum of two years and a maximum of five years." This may have been what he meant, but he did not articulate such in plain English. It was therefore rational, reasonable, and appropriate for Brent to advocate enlargement of issues because Huber's financing document lacked key loan terms. *See generally, Multi-State Communications, Inc., v. FCC*, 590 F.2d 1117 (D.C. Cir. 1978).

3. In October 1991, a presumptively experienced banker (Mr. Tierney) informed a reasonably sophisticated customer (Huber) that the bank "would be interested" in making her a substantial business loan. Mr. Tierney now states by way of amplification that he was providing Huber with an "assurance of our [the bank's] intention to loan you up to \$350,000...." He did not say so at the time, however, and the language he employed in his 1991 letter can by no stretch of the imagination be construed as evincing the bank's then "present firm intention" to lend Huber \$350,000 or any *percentage* thereof. *See FCC Form 301, Sec. III, Question 2.*

4. The "wishy-washy" precatory language ("would be interested") in the bank's first letter, coupled with an unarticulated interest rate proposal and an incomprehensible loan term, triggered enlargement motions, and properly so. Brent's motion neither ignored "applicable cases" (Opp. 1) nor attempted to distort the bank letter (Opp.2). Brent agrees with Huber's contention at Opp. 5 that, "Reasonable assurance is

a matter of substance, not magic words." In fact, Huber's October 29, 1991, bank letter lacked substance, and when construed in the context of applicable Commission and judicial precedents, was deficient.

Respectfully submitted,

**RITA REYNA BRENT**

By: 

Henry A. Solomon  
John Wells King

Her Attorneys

HALEY, BADER & POTTS  
Suite 900  
4350 North Fairfax Drive  
Arlington, VA 22203-1633  
703/841-0606

May 17, 1993

**CERTIFICATE OF SERVICE**

I, Dinah L. Hood, a secretary in the law firm of Haley, Bader & Potts, hereby certify that a copy of the foregoing **"Reply of Rita Reyna Brent to Martha J. Huber,"** was mailed, postage pre-paid, this 17th day of May, 1993 to the following:

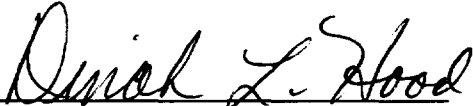
The Honorable Richard L. Sippel \*  
Administrative Law Judge  
Federal Communications Commission  
2000 L Street, N.W., Suite 214  
Washington, D.C. 20554

James Shook, Esquire \*  
Hearing Branch, Enforcement Division  
Mass Media Bureau  
Federal Communications Commission  
2025 M Street, N.W., Suite 7212  
Washington, D.C. 20036

Donald J. Evans, Esq.  
McFadden, Evans & Sill  
1627 Eye Street, N.W., Suite 810  
Washington, D.C. 20006  
(Counsel for Staton Communications)

John J. Schauble, Esquire  
Cohen & Berfield  
1129 20th Street, N.W.  
Washington, D.C. 20036  
(Counsel for Martha J. Huber)

Bradford D. Carey, Esq.  
Hardy and Carey  
111 Veterans Boulevard, Suite 255  
Metairie, LA 70005  
(Counsel for Midamerica Electronics  
Service, Inc.)

  
Dinah L. Hood

\* Hand Delivered